

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

**CORAM : HON'BLE SHRI S.R.NAYAK, CJ.
HON'BLE SHRI V.K.SHRIVASTAVA, J.**

Misc. Appeal (C) No.184 of 2006

**APPELLANTS :
CLAIMANT**

1. Smt Joodawati Pandey aged about 46 years W/o Mohan Pandey
2. Shri Mohan Pandey aged about 50 years S/o Rambhawan Pandey
3. Akhilesh Pandey aged about 21 Years S/o Mohan Pandey
4. Gyaneshwar Pandey aged about 19 years S/o Mohan Pandey
5. Rajeshwar Pandey aged about 16 years S/o Shri Mohan Pandey
6. Nageshwar Pandey aged about 14 years Shri Mohan Pandey
7. Ku.Anjali Pandey aged 12 years S/o Shri Mohan Pandey

SI No.5 to 7 Minor through Guardian mother Smt Jarawati Pandey appellant No.1.

All are R/o Village Hirri Minies Thana Hirri Dist.Bilaspur (C.G.)

Versus

RESPONDENTS :

- ① Krishna Kumar aged about 34 years S/o Jagdesh Singh Jat R/o Jharathi Thana Kharkhoda, Dist.Konipat (Haryana)(Driver Tenker / Triler No.H.R.63/D/4455)
- ② Devendra Singh aged about 41 years S/o Mahendra Singh R/o House No.39 Lowarkhurd Tah B.Garh Dist.Jhajhar (Haryana) (Registered Owner of Moter Tenker / Trailer No.H.R.63/Ng-4455)
- ③ The New India Insurance Company Through - Branch Manager Branch Office Top of the Jaysher Truck Agenceies Near Bus Stand Bahadurgarh Dist.Jhajhar (Haryana)Through Branch Manager The New India Insurance Co.Ltd.Rajendra Nager Chowk Bilaspur (c.g.)

PRESENT:

Smt Renu Kochar, Counsel for the Appellants.

ORAL ORDER

(Dated 15th November, 2006)

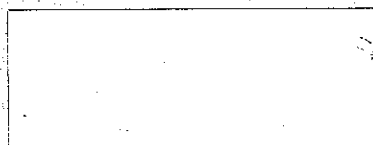
The following oral order of the Court was passed by **S.R.Nayak,**

CJ. :

The legal representatives of the deceased have filed this appeal for enhancement of the compensation.

2) The first contention of learned counsel for the appellants is that the MACT ought not to have deducted 2/3rd of the income of the deceased towards his personal expenses for the purpose of computing loss of dependency. The second contention of learned counsel for the appellants is that the MACT has applied wrong multiplier of 13 for assessing loss of dependency. The last contention of learned counsel for the appellants is that the deceased was earning monthly income of Rs.3,700/-, whereas, the MACT has wrongly taken the income of the deceased @ Rs.3,000/- per month for assessing loss of dependency.

3) Having heard learned counsel for the appellants and perused the impugned award and other material papers laid before us, we do not find any merit in any of the contentions of learned counsel for the appellants. The deceased has left behind him mother, father, brothers and sister. There is no hard and fast rule that in each and every case of death, while computing loss of dependency, only 1/3rd of the income of the deceased should be deducted towards personal expenses of the deceased. It all depends upon the facts and circumstances of the case and the dependency established by the claimants on the income of the deceased person. It is not as if the deceased was the only son of the parents. The parents have two more major sons and a daughter to support them. The parents have failed to adduce any substantive evidence before the MACT to show that the deceased was, in fact, spending only 1/3rd of his income towards his personal expenses and contributing 2/3rd of his income to support the family. In the absence of such material evidence, no exception could be taken to the award of the MACT in deducting 2/3rd income of the deceased



towards his personal expenses and holding that he was contributing only 1/3rd of his income to support the family.

4) The second contention of learned counsel for the appellants is untenable since the legal representatives are the parents, major brothers and sister. The MACT has rightly taken the average age of parents for determining appropriate multiplier for the purpose of computing loss of dependency. On the date of the accident, the age of the mother was 46 years and the age of father was 50 years, and the average age of the parents would come to 48 years and, therefore, the MACT has rightly applied multiplier 13 for assessing loss of dependency. We do not find merit in the third contention of learned counsel of the appellants also. In support of the income of the deceased, the claimants themselves have produced a certificate to show that he was earning only Rs.2,000/- as income per month. Nevertheless, the MACT having regard to the fact that the deceased was working as Security Guard has taken the income of the deceased @ Rs.3,000/- month for assessing loss of dependency. There is no substantive evidence adduced by the appellants to show that the deceased, in fact, was earning monthly income of Rs.3,700/-. No other points are urged before us by learned counsel for the appellants. The appeal is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

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